

EXHIBIT 8

1 COURT OF APPEALS FOR THE SECOND CIRCUIT
2
3

4 MIRKIN V. XOOM ENERGY, LLC
5
6

7 CASE NO. 18-3138
8
9

10 ORAL ARGUMENT RECORDING
11
12

13 ON
14
15

16 NOVEMBER 6, 2019
17
18

19 SPEAKERS:
20 JUDGE NEWMAN
21 JUDGE PARKER
22 JUDGE POOLER
23 BURKETT MCINTURFF, ESQUIRE, COUNSEL FOR THE PLAINTIFF
24 DAVID KOTT, ESQUIRE, COUNSEL FOR THE DEFENDANT
25

1 R E C O R D I N G

2 JUDGE: The next matter on our calendar is
3 Susanna Mirkin and others versus XOOM Energy, LLC.
4 Water. Just a little. Thank You. I'm so thirsty
5 today. Thank you. Thanks. Good morning. I said
6 good morning, counsel.

7 MR. MCINTURFF: Good morning, Your Honor.
8 Burkett McInturff, on behalf of Susanna and Boris
9 Mirkin and the proposed class. May it please the
10 Court, this is a simple breach of contract case. The
11 defendant's contract requires that their energy rates
12 be based on the defendant's supply costs.

13 JUDGE: That's not their only basis, but it
14 is the basis to start the calculation. Is that your
15 argument?

16 MR. MCINTURFF: No, Your Honor. That is the
17 only basis. The contract says it's based --

18 JUDGE: Don't they have other things that
19 they say will enter into the cost of the energy?

20 MR. MCINTURFF: No, Your Honor. The contract
21 says the -- and I'm pointing to page 12 in our opening
22 brief -- the customer's monthly variable rate is based
23 on XOOM's actual and estimated supply costs, which may
24 include, but not be limited to prior period
25 adjustments, inventory, and balancing costs. So it's

Page 2

1 MR. MCINTURFF: No, Your Honor. Our argument
2 -- tied to but not identical. They must reflect their
3 costs. These companies are very lean businesses.
4 They're essentially brokers and traders. They have
5 very low overhead. They buy on the wholesale market
6 and they resale to consumers. So the wholesale --

7 JUDGE: The thing is that the ultimate price
8 to the consumer has to have some relationship to their
9 supply costs.

10 MR. MCINTURFF: Correct. And instead not
11 evidence, essentially, price gouging, margins that are
12 well in excess of the underlying costs.

13 JUDGE: May I ask, isn't this case decided by
14 Direct Energy?

15 MR. MCINTURFF: The -- this --

16 JUDGE: (Crosstalk).

17 MR. MCINTURFF: -- as Your Honor dissented,
18 this case is the opposite of Direct Energy. And
19 Direct Energy, the contract said that the defendant's
20 prices were to be based on business and market
21 conditions. The Court said, "Well, that's -- there's
22 significant leeway in here." The plaintiffs in that
23 case were trying to tie the company's rates to its
24 supply costs. That was their main argument.

25 This is the opposite. The company has bound

Page 4

1 confined to the defendant's supply costs. That's --
2 JUDGE: Whatever balancing costs are, that
3 doesn't seem like it's a scientific term.

4 MR. MCINTURFF: Balancing costs are actually
5 included in the wholesale cost of energy when you
6 purchase energy.

7 JUDGE: What is a balancing cost?

8 MR. MCINTURFF: A balancing cost is one of
9 many subcategories of costs that are incorporated in
10 the wholesale rate. So the rate that is published in
11 -- that an energy company such as XOOM pays to
12 purchase energy is composed of dozens of components.
13 Though most of those components are regulated costs
14 and regulated components and a balancing cost is one
15 of those components.

16 JUDGE: Their profit, which they're allowed
17 to achieve, aren't they allowed a margin over and
18 above these costs?

19 MR. MCINTURFF: Again, Your Honor, we're not
20 taking the position that they're not allowed a margin.
21 We're taking the position that their rates have to be
22 tied to their supply costs, which is what their
23 contract --

24 JUDGE: Tied to, but not identical. Isn't
25 that what your argument is?

Page 3

1 its costs, it's -- has bound its rates to its supply
2 costs. So we don't have the same problem that the
3 plaintiffs had in Direct Energy, where the Court was
4 able to say, "Well, there's these myriad of factors.
5 There's many things that can go into how the defendant
6 sets rate."

7 And in Direct Energy, the practices that were
8 challenged there are indicative of the practices of
9 this industry as a whole. And as pointed out by the
10 Public Service Commission staff recently, this is a
11 billion-dollar fraud that's being perpetrated on New
12 York consumers. Consumers can't compare their prices.
13 They can't tell that they're getting overcharged.

14 And the energy companies like defendants
15 here, they know it and they're charging much higher
16 rates than what they're paying for energy and
17 consumers are stuck.

18 JUDGE: The idea of allowing this kind of
19 industry was a consumer protection idea, so that there
20 would be negotiation, so that there would be
21 competition for the rate payer. So how did it go so
22 wrong?

23 MR. MCINTURFF: Well, as the PSC staff has
24 found that the industry has taken proactive steps to
25 obscure their pricing. It's not like when you drive

Page 5

2 (Pages 2 - 5)

1 around and you purchase gas, you can look and see what
2 -- how much the gas is charging. This is something
3 that is billed to you constantly as you use your
4 energy. It comes a month later and it's very
5 difficult to compare prices, which is why companies
6 like XOOM make representations that their prices are
7 going to be tied to their costs. They can get market
8 share that way.

9 JUDGE: We haven't had discovery yet. So you
10 don't know exactly the relationship between their
11 costs and the prices they charge.

12 MR. MCINTURFF: That is true. But we have a
13 very good idea because XOOM purchases on the wholesale
14 market. This is simply a wholesaler. They buy on the
15 wholesale market and they --

16 JUDGE: Do you know the price they pay?

17 MR. MCINTURFF: We basically know the price.
18 We don't know the exact price. We don't know all of
19 their supply costs. But again, they don't -- they're
20 very lean operations. They don't have a lot of staff.
21 They certainly don't deliver or bill or do or generate
22 --

23 JUDGE: What do they do, actually?

24 MR. MCINTURFF: They're brokers. They're
25 brokers and companies like XOOM, they even outsource

Page 6
1 margins compared to what they're paying on wholesale.
2 That's not what you would pay with ConEd or
3 any other utility. And here the contract requires
4 that costs be -- that the defendant's rates be based
5 on their supply costs.

6 JUDGE: Well, let me ask you this, Your
7 Honor. Time is running out. But why do you believe
8 your implied covenant claim is viable?

9 MR. MCINTURFF: Well, Your Honor, the
10 District Court dismissed the implied covenant claim as
11 duplicative of the contract claim. We decided not to
12 challenge the implied covenant claim. So at this
13 point, it's just breach of contract.

14 JUDGE: Are you --

15 JUDGE: So it's not unjust enrichment, and
16 it's not implied.

17 MR. MCINTURFF: Those two claims were removed
18 from the proposed amended complaint because they were
19 dismissed. Those -- the judge's ruling that those
20 claims were duplicative of the contract claim are not
21 the subject of our appeal.

22 JUDGE: What is it that you propose to
23 include in your amended complaint that the Court below
24 rejected?

25 MR. MCINTURFF: Well, the Court below faulted
Page 8

1 their marketing. They're --

2 JUDGE: Call me all the time, these people.
3 They want me to change my supplier. That -- they do
4 that. So they have a marketing.

5 MR. MCINTURFF: Well, not necessarily, Your
6 Honor. The -- many of the marketing components are
7 outsourced. But again, this is a product you sign up
8 once. As Your Honor pointed out in Your Honor's
9 dissent in the Richards case, maybe you do some
10 diligence the first month. You sign up the first
11 month. But they trick you there. They give you a
12 teaser rate.

13 So the month that you sign up, where you're
14 doing diligence, you're on a teaser rate, and then the
15 next months come and they raise your rate and raise
16 your rate and raise your rate, and all of a sudden
17 you're paying sometimes 30, 40, 50 percent more than
18 you would have paid your utility for the same energy.
19 It's the same stuff. There's no difference.

20 And here the defendants have tied their
21 contract, their prices, to their underlying supply
22 costs. We allege in the complaint, which must be
23 taken as true, and we show based on wholesale prices,
24 that the defendant's costs don't resemble their supply
25 costs. In fact, they're taking 40, 50, 60 percent

1 us for -- the perceived faults that the Court found
2 was, is that we didn't disclose our calculations
3 because it's a complaint, but we disclosed our
4 calculations so that the Court could see how the
5 various components added up and didn't equal anywhere
6 near what the prices XOOM's -- XOOM was charging.
7 The Court also found that we didn't specify
8 as clearly as the Court would have liked. That XOOM
9 purchases on the wholesale market, which is key
10 because if XOOM says our rates are going to be based
11 on our costs, it's a fair point to say, well, what are
12 your costs?

13 Well, we found proof that XOOM is a
14 participant in New York's regulated wholesale energy
15 market, and so we're able to determine their costs.
16 And when you line up their costs for energy alongside
17 the rates they charge, it doesn't add up. And it's
18 consistent with a pattern of behavior that has harmed
19 New York consumers to the tune of billions of dollars.
20 In this case it's just one of the many

21 consumer protection actions that are trying to bring
22 some oversight to this industry and protect New York
23 consumers, and we should have been allowed and should
24 be allowed to proceed to discovery. Thank you.

25 JUDGE: Are you here arguing the sufficiency

Page 9

3 (Pages 6 - 9)

1 of your first complaint or your amended complaint?
2 MR. MCINTURFF: Both, Your Honor. The first
3 complaint we believe was sufficient. It's a simple
4 breach of contract case. The defendant's contract
5 says its prices are based on --

6 JUDGE: Whether it's simple or not. You --
7 I'm a little surprised you're even invoking the first
8 complaint. If you've got a second complaint in the
9 record and that's the one that is limited to the
10 breach of contract and drops the others, I would have
11 thought you're here on the second complaint.

12 MR. MCINTURFF: We're here on both because
13 it's at the -- we're at the pleading stage, Your
14 Honor, and we pled what XOOM's --

15 JUDGE: Why do you want the first one if --
16 which has three causes of action, two of which you
17 just told us you dropped. So why should we look at
18 something most of which is gone?

19 JUDGE: What's in the first that's not in the
20 second?

21 MR. MCINTURFF: Fair enough. If we have to
22 stand on one complaint, we would stand on this.

23 JUDGE: It'd be the second one?

24 MR. MCINTURFF: The second complaint.
25 JUDGE: All right. Now, and the District

1 JUDGE: So I -- that's why I don't
2 understand. In your -- well, your first complaint
3 does talk about supply. But if your theory is they
4 promise that the price to the consumer would vary
5 according to the wholesale price, then why not just
6 say that? Why do you then sort of use the more
7 general terms supply? Because of -- they could get
8 supply theoretically on the retail market. They could
9 go to another retailer.

10 MR. MCINTURFF: Well, Your Honor, the
11 contract bases the prices on the defendant's "supply
12 costs." And we know as we allege in the complaint
13 that they buy wholesale. So we -- they don't buy from
14 another retailer and we allege, and must be taken as
15 truth, they buy wholesale. They pay the wholesale
16 price. And so, we know based on our experience in the
17 industry that that's essentially all they do is they -
18 -

19 JUDGE: That's what's alleged?

20 MR. MCINTURFF: -- buy wholesale. That's
21 what we allege, that is 90 percent of their --

22 JUDGE: Is it fair to say --

23 MR. MCINTURFF: -- of their costs.

24 JUDGE: -- the class allegations have nothing
25 to do with any issue before us now?

Page 10

Page 12

1 Court referred to the -- an allegation of wholesale
2 costs being 90 percent of total costs.

3 MR. MCINTURFF: That's correct.

4 JUDGE: Is that in the second complaint?

5 MR. MCINTURFF: Yes, Your Honor.

6 JUDGE: Can you tell me -- do you know
7 offhand or can you help me find which paragraph?

8 MR. MCINTURFF: Yes, Your Honor. I can.

9 JUDGE: I thought it was there. I just don't
10 see it as I look. Well, anyway, what -- you're
11 satisfied it's in there somewhere?

12 MR. MCINTURFF: Yes, Your Honor. If you'd
13 like, we can submit a letter --

14 JUDGE: No. We're fine. If it's -- if you
15 say it's in there, well.

16 MR. MCINTURFF: It's definitely in there.
17 JUDGE: (Crosstalk).

18 MR. MCINTURFF: A term search would --

19 JUDGE: All right. Now, you keep talking
20 about their supply costs, but in fact, your second
21 complaints refers specifically to the fact that they -
22 - the supply costs were based on their costs in the
23 wholesale market.

24 MR. MCINTURFF: That's correct. They buy on
25 the wholesale market. So they -- again, they --

1 MR. MCINTURFF: That's fair to say, Your
2 Honor. It was --

3 JUDGE: Well, then if we find the second
4 complaint is sufficient, it will be up to the district
5 judge to decide in the first instance the class issue.

6 MR. MCINTURFF: That's correct, Your Honor.
7 We were dismissed on the pleadings. We haven't --
8 we've had no discovery. We haven't been permitted to
9 show that their prerequisites of Rule 23 have been
10 met.

11 JUDGE: Reserve two minutes for rebuttal.

12 MR. MCINTURFF: Thank You, Your Honor.

13 JUDGE: We'll hear from XOOM.

14 MR. KOTT: May it please the Court. My name
15 is David Kott. I am the attorney for the defendant's
16 appellees. Here's what the contract says, and it's on
17 page A94 of the appendix.

18 JUDGE: Ninety-four?

19 MR. KOTT: A94 of the appendix. The first
20 paragraph of the contract says that the customer's
21 variable market rate will be "based upon actual and
22 estimated, and estimated supply costs, which may
23 include but not limited to, but not limited to, prior
24 period adjustments, inventory and balancing costs."
25 That's the contract provision we're dealing with on

Page 11

Page 13

4 (Pages 10 - 13)

1 this appeal.
2 And when you look at either the plaintiff's
3 initial complaint or the plaintiff's proposed amended
4 complaint, it has no allegations about the estimated
5 costs of XOOM.

6 JUDGE: Well, if you are --

7 JUDGE: But the prices you actually charge,
8 it seems to me, can't be divined or can't be matched
9 up with what you say you're going to do. You say that
10 it's based on the actual and estimated cost. Would
11 you agree that you're dealing with a commodity and you
12 are essentially a commodity broker?

13 MR. KOTT: Yeah. I think I would agree with
14 that Judge.

15 JUDGE: All right. So we start off in the --
16 you have this teaser rate. And, you know, the next
17 month you're charging 12.50 in the market is 11.89.
18 Then two months later you're 50 percent over the
19 market rate. The next month you're 45 percent over
20 the rate. The -- and by October you're 60 percent
21 over the rate.

22 I have a tough time understanding how in a
23 commodities business where, I mean, you're improving
24 on -- electricity is electricity. It's not even like
25 you're selling better electricity or anything like

Page 14

1 charge estimated costs.

2 JUDGE: But if you are any kind of business
3 people, the estimated costs should track the real
4 costs only be a lagging indicator --

5 MR. KOTT: Well --

6 JUDGE: -- correct?

7 MR. KOTT: Well, it would --

8 JUDGE: I mean, that -- isn't that what you
9 try to do, estimate accurately?

10 MR. KOTT: Of course. But we're in an
11 industry where you sometimes can get spikes in prices.
12 You can get the polar vortex where the energy soars
13 because everybody is very shivering in their home.

14 JUDGE: But that's all for trial. Maybe
15 you're going to show that in fact your rate did vary
16 according to the wholesale rate because it spiked, it
17 went down.

18 MR. KOTT: Uh-huh.

19 JUDGE: You may win. But right now you've
20 got a contract that says supply costs and they've
21 alleged your rate didn't vary with supply costs. That
22 in fact the wholesale rate was 90 percent of your
23 supply costs and it didn't vary with that.

24 MR. KOTT: Right. And I think we're back,
25 Judge Newman, to Iqbal and Twombly. They've alleged

Page 16

1 that. It seems to me you're just simply taking a
2 wholesale rate and tacking on a tremendous writeup,
3 which hard to believe, reflects any additional value
4 you add or anything you do.

5 MR. KOTT: Couple --

6 JUDGE: And so, it seems to me, once I look
7 at the chart, that your representations aren't what
8 you're really doing. And you may be able to win, but
9 this is just at a pleading stage.

10 MR. KOTT: Couple responses to that, Judge.

11 JUDGE: Please.

12 MR. KOTT: First, the market rate the Court
13 just referred to is a market rate calculated by the
14 plaintiffs unrelated to the costs set forth in the
15 contract that I just quoted. It --

16 JUDGE: Is that related to the wholesale
17 cost?

18 MR. KOTT: Not their market rate. They put
19 in the market rate. And that's what Judge Parker just
20 asked me. They put in the market rate. And when they
21 put in the elements of the market rate, which is what
22 the Court just asked me, comparing the market rate,
23 that's their market rate, that has elements that
24 aren't found anywhere in the contract. That's the
25 first thing. Second thing, the contracts allows us to

Page 15

1 90 percent conclusory terms.

2 JUDGE: That's a -- yeah. I understand. I
3 was curious about that. The District Court said that.
4 They said the nine -- the statement that more than 90
5 percent of defendant's supply costs come from its
6 purchase of wholesale energy. What's conclusory about
7 that?

8 MR. KOTT: Because they have no basis that
9 our supply costs, meaning XOOM's, are 90 percent.

10 JUDGE: Well, that's why they want discovery,
11 counsel.

12 MR. KOTT: And that's why I -- Judge Pooler,
13 that's why I said I think this is an Iqbal and
14 Twombly, because in Iqbal and Twombly, the Supreme
15 Court was clear, you must set forth a plausible cause
16 of action, not based on speculation, based on actual
17 facts before you --

18 JUDGE: (Crosstalk) conclusion. What is the
19 conclusion? What's conclusory rather as distinguished
20 from factual when you say more than 90 percent come
21 from the purchase of wholesale energy? Which word or
22 phrase is a naked conclusion?

23 MR. KOTT: The 90 percent because it's not
24 tethered --

25 JUDGE: That's not specific enough, 90

Page 17

5 (Pages 14 - 17)

1 percent?
2 MR. KOTT: It's not tethered to the contract.
3 The contract says we can take into account --
4 JUDGE: It's tethered to the word supply.
5 That's in the contract, supply --
6 MR. KOTT: Right.
7 JUDGE: -- costs.
8 MR. KOTT: Right.
9 JUDGE: And that's the very same sentence.
10 90 percent of defendant's supply costs come from its
11 purchase of wholesale energy.
12 MR. KOTT: Right.
13 JUDGE: So again, where's the conclusory
14 statement?
15 MR. KOTT: I would submit that the entire
16 sentence that the Court, Judge Newman, you just read
17 to me is conclusory. There's nothing tied there to
18 the words of the contract, which means estimated
19 supply costs and which includes prior period.
20 JUDGE: (Crosstalk) it said more than 90
21 percent of defendant's actual and estimated supply
22 costs, then it wouldn't have been conclusory?
23 MR. KOTT: Taking into account other factors
24 such as prior period adjustments --
25 JUDGE: You don't have to recite the whole

Page 18

1 JUDGE: That's Iqbal?
2 MR. KOTT: Yeah. I do think it's just as --
3 I think the lesson of Iqbal and Twombly, and I know
4 Your Honors deal with it more than I do, you deal with
5 it every day, is you don't get to say -- and the
6 plaintiffs have done this. If you look at page A83 of
7 the appendix in paragraph 58 of their proposed amended
8 complaint, they talk about if we could get additional
9 discovery, we could prove.
10 If you look at plaintiff's reply brief at
11 page 18, plaintiff's opening brief at page 16, it
12 talks about -- and I'm going to be very general. It
13 talks -- yeah. If we can get some more discovery, we
14 can fill in the holes that we have in our complaint.
15 JUDGE: No. I -- you know, you keep invoking
16 Iqbal and Twombly. What seems to me to be plausibly
17 alleged from -- in this complaint is that you use a
18 teaser rate. You say it's going to -- that the rates
19 going forward are going to be based on supply costs
20 and that's qualified with -- you know, may include but
21 not limited, prior period adjustments, inventory,
22 balancing costs and so forth.
23 And what you're doing here is, as soon as the
24 teaser rate is expired, you're jacking these rates way
25 up, hoping that people who are your customers aren't

Page 20

1 contract every time they make an allegation.
2 MR. KOTT: Well, I don't -- in the District
3 Court here, in her first motion to dismiss -- order
4 granting the motion to dismiss, was very clear and
5 gave a roadmap to the plaintiffs as to what the Court
6 thought was insufficiently pled under --
7 JUDGE: (Crosstalk).
8 MR. KOTT: -- Iqbal and Twombly.
9 JUDGE: They didn't even use the word
10 wholesale the first time.
11 MR. KOTT: Right. Right. And in the --
12 JUDGE: They now come back and they say, "All
13 right, Judge. You faulted us for not talking about
14 wholesale. We'll talk about wholesale. And we won't
15 just say it's in there somewhere, we'll say 90 percent
16 of it is wholesale."
17 MR. KOTT: Right.
18 JUDGE: You don't think that's specific?
19 MR. KOTT: No. I don't think under Iqbal and
20 Twombly because it's not tethered to the words of the
21 contract. They don't explain where they get 90
22 percent.
23 JUDGE: Conclusory is saying the Attorney
24 General did something wrong.
25 MR. KOTT: Yeah. I --

Page 19

1 going to be sophisticated enough to decode their
2 utility to bill to see this wild variation, upward
3 variation, in the price of something that's
4 essentially a commodity which you buy as a broker in a
5 commodities market.
6 Seems misleading to me -- I don't mean
7 misleading to me, but it seems to me that is
8 essentially what they're alleging. And I see nothing
9 implausible about that. They may be wrong, they may
10 not be able to prove it, but it certainly seems
11 plausible to me.
12 MR. KOTT: Judge Parker, I think that
13 ignores, right in the first page of the contract,
14 right in the middle where the contract states to the
15 customer, "We do not guarantee savings." In the first
16 page of the contract under the term, the contract --
17 the customer can end this contract either in writing
18 or by calling a toll-free number. In fact, we know
19 this customer --
20 JUDGE: (Crosstalk).
21 MR. KOTT: -- Mr. Mirkin, he's price
22 sensitive. He's paying attention. He's paying
23 attention.
24 JUDGE: (Crosstalk) --
25 MR. KOTT: He will --

Page 21

6 (Pages 18 - 21)

1 JUDGE: -- counsel eliminates the possibility
2 that you're -- that you've breached your contract?
3 MR. KOTT: Not at all. I'm simply responding
4 to Judge Parker's question that the consumer doesn't
5 know, and essentially, we take advantage of the
6 consumer by the teaser rate. Here we have a price
7 sensitive customer. We know that because of his other
8 class action brought by the same attorneys when he
9 bought energy like we did for Viridian.

10 JUDGE: You think you have a price sensitive
11 class?

12 MR. KOTT: I don't -- I hadn't anticipated
13 that question because class issues aren't here, Your
14 Honor. I will confess I had not thought about that.

15 JUDGE: I'll withdraw it.

16 MR. KOTT: But on this record, for who's in
17 the class, the people on the -- in the class, would be
18 people who would have received this contract, which
19 says, number one, we don't guarantee any savings. And
20 number two, you can leave whenever you want. Just
21 pick up the phone and dial an 800 number.

22 JUDGE: Well, I appreciate you don't
23 guarantee a saving because the wholesale price may go
24 way up, in which case the consumer price is going to
25 go way up. I get that. But isn't the customer

Page 22

1 consumer can have that expectation. I do not think
2 the consumer can have the --
3 JUDGE: Supposing, in fact, it was 98
4 percent, would the consumer then be entitled to think,
5 "Well, if wholesale costs vary, my costs are going to
6 vary"?

7 MR. KOTT: And we may be talking about a
8 different contract. A lot of the cases --

9 JUDGE: I'm just wondering if your problem is
10 with that 90 is too low a number, or you don't like
11 the whole concept of putting a percentage on it?

12 MR. KOTT: I don't like the concept --

13 JUDGE: That's what I thought.

14 MR. KOTT: Let me back up. I don't --

15 JUDGE: You're not really quarrelling with
16 90.

17 MR. KOTT: Well, there's nothing in this
18 record that supports 90 percent. Other than a --

19 JUDGE: Of course, there's not. Because they
20 haven't had a trial.

21 MR. KOTT: And --

22 JUDGE: They've pled 90 percent.

23 MR. KOTT: Right.

24 JUDGE: So to tell me there's nothing in the
25 record on a motion to dismiss is, if you'll forgive

Page 24

1 entitled to think as the wholesale price varies since
2 it's 90 percent of your price, then my cost is going
3 to vary?

4 MR. KOTT: No --

5 JUDGE: That's not a fair inference?

6 MR. KOTT: No. Because we have prior period
7 adjustments. There might be adjustments that come in
8 that affect that. This customer was only with us for
9 about five months. We have balancing costs and we may
10 have other costs --

11 JUDGE: Even though this is 90 percent of the
12 price?

13 MR. KOTT: Well, again, I had the colloquy
14 earlier with the Court on my view on whether 90
15 percent is a conclusory allegation or not.

16 JUDGE: I understand you called it
17 conclusory.

18 MR. KOTT: Yeah.

19 JUDGE: Whether it's conclusory or not, it's
20 still 90 percent, which is a lot.

21 MR. KOTT: Right. But it doesn't --

22 JUDGE: Does a consumer then think that, "My
23 price is going to vary substantially with wholesale
24 costs"?

25 MR. KOTT: On this contract I don't think the

Page 23

1 me, a bit disingenuous that there's nothing in the
2 record.

3 MR. KOTT: And I might have been overbroad.
4 There's nothing that supports the allegation of 90
5 percent in the record.

6 JUDGE: How would there be?

7 MR. KOTT: You could do it from other energy
8 companies. You could get the information from any --
9 this --

10 JUDGE: Why should you do that at the
11 pleading stage if you've said 90 percent?

12 MR. KOTT: Because I think under my reading
13 of the case law, that's what's required.

14 JUDGE: I see. Okay.

15 JUDGE: Thank you.

16 MR. KOTT: Thank you. We thank the Court.
17 JUDGE: Counsel, you've reserved two minutes

18 for rebuttal.

19 MR. MCINTURFF: Yes, Your Honor. Just
20 briefly. To Your Honor's prior question about the 90
21 percent allegation, that's on -- it's on page A64 of
22 the Appendix.

23 JUDGE: Sixty-four?

24 MR. MCINTURFF: Yes, Your Honor. It's
25 paragraph four in the proposed amended complaint.

Page 25

7 (Pages 22 - 25)

1 JUDGE: Yeah. Got it.
2 MR. MCINTURFF: And just briefly to address
3 the defendant's point about prior period adjustments.
4 The charts that we put in the complaint show that the
5 wholesale costs during the relevant period are quite
6 stable. And essentially what the defendants are
7 asking that the Court do at the pleading stage is
8 assume that there was some prior period where
9 wholesale prices were very, very high and that they
10 were very positive. They were -- the spikes were both
11 high and positive and they were prolonged.
12 And that's simply a question of fact that at
13 this stage of the litigation that can't be answered.
14 And we believe that we've met Twombly and Iqbal, we've
15 plausibly alleged that they're a wholesale market
16 participant. They -- there's publicly available data
17 about their participation in the wholesale markets.
18 We're able to calculate the wholesale price for this
19 plaintiff during their exact billing cycles.
20 And when you compare the two -- the prices
21 that they paid for wholesale and that -- the
22 defendants paid for wholesale energy compared to what
23 the consumer paid, it simply doesn't add up. It's the
24 prices that the defendants are charging are not
25 connected to their wholesale costs. And we have

Page 26

1 MR. MCINTURFF: To beat the utility. So
2 basically, you had to guarantee savings.
3 JUDGE: You'd have to make money under that.
4 I mean, the consumer would have to save money.
5 MR. MCINTURFF: Correct. That was the only
6 way they would permit an ESCO like the defendants to
7 charge a variable energy rate.
8 JUDGE: What happened with that?
9 MR. MCINTURFF: So the hearing has occurred,
10 but the industry challenged the PSCs authority --
11 JUDGE: I'm not surprised.
12 MR. MCINTURFF: -- to issue the regulation.
13 And in May of this year, the New York Court of Appeals
14 upheld the PSC's authority to hold the hearing, but
15 the results of the hearing have not occurred.
16 JUDGE: Oh, that's pending.
17 MR. MCINTURFF: That is pending, Your Honor.
18 JUDGE: They may change this whole industry.
19 MR. MCINTURFF: Hopefully, Your Honor.
20 JUDGE: Thank you.
21 JUDGE: Are you familiar with the Erickson
22 case Supreme Court decided after Iqbal?
23 MR. MCINTURFF: No, Your Honor.
24 JUDGE: You might want to look. It always
25 interests me that plaintiffs -- I understand the

Page 28

1 therefore alleged a breach of contract.
2 JUDGE: Also --
3 JUDGE: Are you familiar --
4 JUDGE: -- you were the attorney for the
5 Mirkins in their previous case against Viridian?
6 MR. MCINTURFF: I was one of the attorneys,
7 Your Honor.
8 JUDGE: You mentioned that the staff of the
9 Public Service Commission has now said this is a
10 billion-dollar scam. What do you propose as a
11 solution? Reregulation or what?
12 MR. MCINTURFF: Well, Your Honor, if it was
13 up to me. But --
14 JUDGE: Well, I mean --
15 MR. MCINTURFF: -- what the -- what is
16 currently proceeding in the Public Service Commission
17 is -- the Mirkins filed their first case against
18 Viridian Energy in 2014. Late at the end of 2014, the
19 Public Service Commission announced a reset of the
20 market where they were deciding to hold a hearing
21 whether to evaluate whether all ESCOs could be
22 prohibited from providing variable rate products
23 unless they guaranteed to beat the utility. And that
24 proceeding last summer proceeded to --
25 JUDGE: Unless they guaranteed what?

Page 27

1 problem you're confronted with Iqbal and Twombly, and
2 so everybody says whether or not it meets Iqbal and
3 Twombly. But within two weeks of those cases, they
4 reversed the District Court for throwing out a
5 complaint, a very short complaint. Short, concise,
6 according to the rule, and they reinstated it.
7 So I don't understand why plaintiffs don't
8 say we are sufficient under the Twombly, Iqbal,
9 Erickson rule, which gets the full sequence.
10 MR. MCINTURFF: I'll read it on the train,
11 Your Honor.
12 JUDGE: Thank you.
13 JUDGE: Thank you, counsel.
14 MR. MCINTURFF: Thank you.
15 JUDGE: Thank you both. Lively discussion.
16 JUDGE: Thank you all.
17 JUDGE: Will reserve decision.
18
19
20
21
22
23
24
25

Page 29

8 (Pages 26 - 29)

1 CERTIFICATE OF TRANSCRIBER
2 I, RODIE DEAN, do hereby certify that this
3 transcript was prepared from the digital audio
4 recording of the foregoing proceeding, that said
5 transcript is a true and accurate record of the
6 proceedings to the best of my knowledge, skills, and
7 ability; that I am neither counsel for, related to,
8 nor employed by any of the parties to the action in
9 which this was taken; and, further, that I am not a
10 relative or employee of any counsel or attorney
11 employed by the parties hereto, nor financially or
12 otherwise interested in the outcome of this action.

13 Date: 6/13/2024

14

Rodie Dean

15 RODIE DEAN
16
17
18
19
20
21
22
23
24
25

Page 30

[11.89. - balancing]

1	18:10,20 19:15 19:21 23:2,11 23:14,20 24:10 24:16,18,22 25:4,11,20 98 24:3	address 26:2 adjustments 2:25 13:24 18:24 20:21 23:7,7 26:3 advantage 22:5 affect 23:8 agree 14:11,13 allegation 11:1 19:1 23:15 25:4,21 allegations 12:24 14:4 allege 7:22 12:12,14,21 alleged 12:19 16:21,25 20:17 26:15 27:1 alleging 21:8 allowed 3:16 3:17,20 9:23 9:24 allowing 5:18 allows 15:25 alongside 9:16 amended 8:18 8:23 10:1 14:3 20:7 25:25 announced 27:19 answered 26:13 anticipated 22:12	anyway 11:10 appeal 8:21 14:1 appeals 1:1 28:13 appellees 13:16 appendix 13:17 13:19 20:7 25:22 appreciate 22:22 arguing 9:25 argument 1:9 2:15 3:25 4:1 4:24 asked 15:20,22 asking 26:7 assume 26:8 attention 21:22 21:23 attorney 13:15 19:23 27:4 30:10 attorneys 22:8 27:6 audio 30:3 authority 28:10 28:14 available 26:16
2	2014 27:18,18 2019 1:11 23 13:9		
3	30 7:17		
4	40 7:17,25 45 14:19		
5	50 7:17,25 14:18 58 20:7		
6	6 1:11 6/13/2024 30:13 60 7:25 14:20		
8			b
800 22:21			back 16:24 19:12 24:14
9			balancing 2:25 3:2,4,7,8,14 13:24 20:22
90 11:2 12:21 16:22 17:1,4,9 17:20,23,25	26:23 added 9:5 additional 15:3 20:8		

[balancing - components]

23:9 based 2:12,17 2:22 4:20 7:23 8:4 9:10 10:5 11:22 12:16 13:21 14:10 17:16,16 20:19 bases 12:11 basically 6:17 28:2 basis 2:13,14 2:17 17:8 beat 27:23 28:1 behalf 2:8 behavior 9:18 believe 8:7 10:3 15:3 26:14 best 30:6 better 14:25 bill 6:21 21:2 billed 6:3 billing 26:19 billion 5:11 27:10 billions 9:19 bit 25:1 boris 2:8 bought 22:9 bound 4:25 5:1 breach 2:10 8:13 10:4,10 27:1 breached 22:2 brief 2:22 20:10,11	briefly 25:20 26:2 bring 9:21 broker 14:12 21:4 brokers 4:4 6:24,25 brought 22:8 burkett 1:22 2:8 business 4:20 14:23 16:2 businesses 4:3 buy 4:5 6:14 11:24 12:13,13 12:15,20 21:4 c c 2:1 calculate 26:18 calculated 15:13 calculation 2:14 calculations 9:2,4 calendar 2:2 call 7:2 called 23:16 calling 21:18 case 1:6 2:10 4:13,18,23 7:9 9:20 10:4 22:24 25:13 27:5,17 28:22	cases 24:8 29:3 cause 17:15 causes 10:16 certainly 6:21 21:10 certificate 30:1 certify 30:2 challenge 8:12 challenged 5:8 28:10 change 7:3 28:18 charge 6:11 9:17 14:7 16:1 28:7 charging 5:15 6:2 9:6 14:17 26:24 chart 15:7 charts 26:4 circuit 1:1 claim 8:8,10,11 8:12,20 claims 8:17,20 class 2:9 12:24 13:5 22:8,11 22:13,17,17 clear 17:15 19:4 clearly 9:8 colloquy 23:13 come 7:15 17:5 17:20 18:10 19:12 23:7	comes 6:4 commission 5:10 27:9,16 27:19 commodities 14:23 21:5 commodity 14:11,12 21:4 companies 4:3 5:14 6:5,25 25:8 company 3:11 4:25 company's 4:23 compare 5:12 6:5 26:20 compared 8:1 26:22 comparing 15:22 competition 5:21 complaint 7:22 8:18,23 9:3 10:1,1,3,8,8,11 10:22,24 11:4 12:2,12 13:4 14:3,4 20:8,14 20:17 25:25 26:4 29:5,5 complaints 11:21 components 3:12,13,14,15
---	---	---	--

[components - direct]

7:6 9:5 composed 3:12 concept 24:11 24:12 concise 29:5 conclusion 17:18,19,22 conclusory 17:1,6,19 18:13,17,22 19:23 23:15,17 23:19 conditions 4:21 coned 8:2 confess 22:14 confined 3:1 confronted 29:1 connected 26:25 consistent 9:18 constantly 6:3 consumer 4:8 5:19 9:21 12:4 22:4,6,24 23:22 24:1,2,4 26:23 28:4 consumers 4:6 5:12,12,17 9:19,23 contract 2:10 2:11,17,20 3:23 4:19 7:21 8:3,11,13,20 10:4,4,10	12:11 13:16,20 13:25 15:15,24 16:20 18:2,3,5 18:18 19:1,21 21:13,14,16,16 21:17 22:2,18 23:25 24:8 27:1 contracts 15:25 correct 4:10 11:3,24 13:6 16:6 28:5 cost 2:19 3:5,7 3:8,14 14:10 15:17 23:2 costs 2:12,23 2:25 3:1,2,4,9 3:13,18,22 4:3 4:9,12,24 5:1,2 6:7,11,19 7:22 7:24,25 8:4,5 9:11,12,15,16 11:2,2,20,22,22 12:12,23 13:22 13:24 14:5 15:14 16:1,3,4 16:20,21,23 17:5,9 18:7,10 18:19,22 20:19 20:22 23:9,10 23:24 24:5,5 26:5,25 counsel 1:22,23 2:6 17:11 22:1 25:17 29:13	30:7,10 couple 15:5,10 course 16:10 24:19 court 1:1 2:10 4:21 5:3 8:10 8:23,25 9:1,4,7 9:8 11:1 13:14 15:12,22 17:3 17:15 18:16 19:3,5 23:14 25:16 26:7 28:13,22 29:4 covenant 8:8 8:10,12 crosstalk 4:16 11:17 17:18 18:20 19:7 21:20,24 curious 17:3 currently 27:16 customer 21:15 21:17,19 22:7 22:25 23:8 customer's 2:22 13:20 customers 20:25 cycles 26:19 d	day 20:5 deal 20:4,4 dealing 13:25 14:11 dean 30:2,15 decide 13:5 decided 4:13 8:11 28:22 deciding 27:20 decision 29:17 decode 21:1 defendant 1:23 5:5 defendant's 2:11,12 3:1 4:19 7:24 8:4 10:4 12:11 13:15 17:5 18:10,21 26:3 defendants 5:14 7:20 26:6 26:22,24 28:6 definitely 11:16 deliver 6:21 determine 9:15 dial 22:21 difference 7:19 different 24:8 difficult 6:5 digital 30:3 diligence 7:10 7:14 direct 4:14,18 4:19 5:3,7
		d 2:1 data 26:16 date 30:13 david 1:23 13:15	

[disclose - further]

disclose 9:2 disclosed 9:3 discovery 6:9 9:24 13:8 17:10 20:9,13 discussion 29:15 disingenuous 25:1 dismiss 19:3,4 24:25 dismissed 8:10 8:19 13:7 dissent 7:9 dissented 4:17 distinguished 17:19 district 8:10 10:25 13:4 17:3 19:2 29:4 divined 14:8 doing 7:14 15:8 20:23 dollar 5:11 27:10 dollars 9:19 dozens 3:12 drive 5:25 dropped 10:17 drops 10:10 duPLICATIVE 8:11,20	e e 2:1 earlier 23:14 either 14:2 21:17 electricity 14:24,24,25 elements 15:21 15:23 eliminates 22:1 employed 30:8 30:11 employee 30:10 energy 1:4 2:3 2:11,19 3:5,6 3:11,12 4:14 4:18,19 5:3,7 5:14,16 6:4 7:18 9:14,16 16:12 17:6,21 18:11 22:9 25:7 26:22 27:18 28:7 enrichment 8:15 enter 2:19 entire 18:15 entitled 23:1 24:4 equal 9:5 erickson 28:21 29:9 esco 28:6 escos 27:21	esquire 1:22,23 essentially 4:4 4:11 12:17 14:12 21:4,8 22:5 26:6 estimate 16:9 estimated 2:23 13:22,22 14:4 14:10 16:1,3 18:18,21 evaluate 27:21 everybody 16:13 29:2 evidence 4:11 exact 6:18 26:19 exactly 6:10 excess 4:12 expectation 24:1 experience 12:16 expired 20:24 explain 19:21 f fact 7:25 11:20 11:21 16:15,22 21:18 24:3 26:12 factors 5:4 18:23 facts 17:17 factual 17:20 fair 9:11 10:21 12:22 13:1	23:5 familiar 27:3 28:21 faulted 8:25 19:13 faults 9:1 filed 27:17 fill 20:14 financially 30:11 find 11:7 13:3 fine 11:14 first 7:10,10 10:1,2,7,15,19 12:2 13:5,19 15:12,25 19:3 19:10 21:13,15 27:17 five 23:9 foregoing 30:4 forgive 24:25 forth 15:14 17:15 20:22 forward 20:19 found 5:24 9:1 9:7,13 15:24 four 13:18 25:23,25 fraud 5:11 free 21:18 full 29:9 further 30:9
--	---	---	--

[g - judge]

g	higher 5:15 hold 27:20 28:14 holes 20:14 home 16:13 honor 2:7,16 2:20 3:19 4:1 4:17 7:6,8 8:7 8:9 10:2,14 11:5,8,12 12:10 13:2,6 13:12 22:14 25:19,24 27:7 27:12 28:17,19 28:23 29:11 honor's 7:8 25:20 honors 20:4 hopefully 28:19 hoping 20:25 huh 16:18	20:20 included 3:5 includes 18:19 incorporated 3:9 indicative 5:8 indicator 16:4 industry 5:9,19 5:24 9:22 12:17 16:11 28:10,18 inference 23:5 information 25:8 initial 14:3 instance 13:5 insufficiently 19:6 interested 30:12 interests 28:25 inventory 2:25 13:24 20:21 invoking 10:7 20:15 iqbal 16:25 17:13,14 19:8 19:19 20:1,3 20:16 26:14 28:22 29:1,2,8 issue 12:25 13:5 28:12 issues 22:13 it'd 10:23	j
			jacking 20:24 judge 1:19,20 1:21 2:2,13,18 3:2,7,16,24 4:7 4:13,16 5:18 6:9,16,23 7:2 8:6,14,15,22 9:25 10:6,15 10:19,23,25 11:4,6,9,14,17 11:19 12:1,19 12:22,24 13:3 13:5,11,13,18 14:6,7,14,15 15:6,10,11,16 15:19 16:2,6,8 16:14,19,25 17:2,10,12,18 17:25 18:4,7,9 18:13,16,20,25 19:7,9,12,13,18 19:23 20:1,15 21:12,20,24 22:1,4,10,15,22 23:5,11,16,19 23:22 24:3,9 24:13,15,19,22 24:24 25:6,10 25:14,15,17,23 26:1 27:2,3,4,8 27:14,25 28:3 28:8,11,16,18 28:20,21,24 29:12,13,15,16
guarantee 21:15 22:19,23 28:2			
guaranteed 27:23,25			
h			
happened 28:8 hard 15:3 harmed 9:18 hear 13:13 hearing 27:20 28:9,14,15 help 11:7 hereto 30:11 high 26:9,11	idea 5:18,19 6:13 identical 3:24 4:2 ignores 21:13 implausible 21:9 implied 8:8,10 8:12,16 improving 14:23 include 2:24 8:23 13:23		

[judge - nine]

29:17 judge's 8:19	law 25:13 lean 4:3 6:20 leave 22:20 leeway 4:22 lesson 20:3 letter 11:13 liked 9:8 limited 2:24 10:9 13:23,23 20:21 line 9:16 litigation 26:13 little 2:4 10:7 lively 29:15 llc 1:4 2:3 look 6:1 10:17 11:10 14:2 15:6 20:6,10 28:24 lot 6:20 23:20 24:8 low 4:5 24:10	15:21,22,23 21:5 26:15 27:20 marketing 7:1 7:4,6 markets 26:17 matched 14:8 matter 2:2 mcinturff 1:22 2:7,8,16,20 3:4 3:8,19 4:1,10 4:15,17 5:23 6:12,17,24 7:5 8:9,17,25 10:2 10:12,21,24 11:3,5,8,12,16 11:18,24 12:10 12:20,23 13:1 13:6,12 25:19 25:24 26:2 27:6,12,15 28:1,5,9,12,17 28:19,23 29:10 29:14	minutes 13:11 25:17 mirkin 1:4 2:3 2:9 21:21 mirkins 27:5 27:17 misleading 21:6,7 money 28:3,4 month 6:4 7:10 7:11,13 14:17 14:19 monthly 2:22 months 7:15 14:18 23:9 morning 2:5,6 2:7 motion 19:3,4 24:25 myriad 5:4
			n
			n 2:1 naked 17:22 name 13:14 near 9:6 necessarily 7:5 negotiation 5:20 neither 30:7 new 5:11 9:14 9:19,22 28:13 newman 1:19 16:25 18:16 nine 17:4

[ninety - prior]

ninety 13:18	25:21	24:18,22 25:5	point 8:13 9:11
november 1:11	paid 7:18 26:21	25:11,21	26:3
number 21:18	26:22,23	percentage	pointed 5:9 7:8
22:19,20,21		24:11	pointing 2:21
24:10	paragraph	period 2:24	polar 16:12
	11:7 13:20	13:24 18:19,24	pooler 1:21
o	20:7 25:25	20:21 23:6	17:12
o 2:1	parker 1:20	26:3,5,8	position 3:20
obscure 5:25	15:19 21:12	permit 28:6	3:21
occurred 28:9	parker's 22:4	permitted 13:8	positive 26:10
28:15	participant	26:11	26:11
october 14:20	9:14 26:16	perpetrated	possibility 22:1
offhand 11:7	participation	5:11	practices 5:7,8
oh 28:16	26:17	phone 22:21	prepared 30:3
okay 25:14	parties 30:8,11	phrase 17:22	prerequisites
once 7:8 15:6	pattern 9:18	pick 22:21	13:9
opening 2:21	pay 6:16 8:2	plaintiff 1:22	previous 27:5
20:11	12:15	26:19	price 4:7,11
operations 6:20	payer 5:21	plaintiff's 14:2	6:16,17,18
opposite 4:18	paying 5:16	14:3 20:10,11	12:4,5,16 21:3
4:25	7:17 8:1 21:22	plaintiffs 4:22	21:21 22:6,10
oral 1:9	21:22	5:3 15:14 19:5	22:23,24 23:1
order 19:3	pays 3:11	20:6 28:25	23:2,12,23
outcome 30:12	pending 28:16	29:7	26:18
outsource 6:25	28:17	plausible 17:15	prices 4:20
outsourced 7:7	people 7:2 16:3	21:11	5:12 6:5,6,11
overbroad 25:3	20:25 22:17,18	plausibly 20:16	7:21,23 9:6
overcharged	perceived 9:1	26:15	10:5 12:11
5:13	percent 7:17,25	pleading 10:13	14:7 16:11
overhead 4:5	11:2 12:21	15:9 25:11	26:9,20,24
oversight 9:22	14:18,19,20	26:7	pricing 5:25
	16:22 17:1,5,9	pleadings 13:7	prior 2:24
p	17:20,23 18:1	please 2:9	13:23 18:19,24
page 2:21	18:10,21 19:15	13:14 15:11	20:21 23:6
13:17 20:6,11	19:22 23:2,11	pled 10:14 19:6	25:20 26:3,8
20:11 21:13,16	23:15,20 24:4	24:22	

[proactive - right]

proactive 5:24	pscs 28:10	16:21,22 20:18	rejected 8:24
problem 5:2 24:9 29:1	public 5:10 27:9,16,19	20:24 22:6 27:22 28:7	related 15:16 30:7
proceed 9:24	publicly 26:16	rates 2:11 3:21	relationship 4:8 6:10
proceeded 27:24	published 3:10	4:23 5:1,16 8:4	relative 30:10
proceeding 27:16,24 30:4	purchase 3:6 3:12 6:1 17:6 17:21 18:11	9:10,17 20:18 20:24	relevant 26:5
proceedings 30:6	purchases 6:13 9:9	rather 17:19	removed 8:17
product 7:7	put 15:18,20,21	read 18:16 29:10	reply 20:10
products 27:22	26:4	reading 25:12	representations 6:6 15:7
profit 3:16	putting 24:11	real 16:3	required 25:13
prohibited 27:22	q	really 15:8 24:15	requires 2:11 8:3
prolonged 26:11	qualified 20:20	rebuttal 13:11 25:18	reregulation 27:11
promise 12:4	quarrelling 24:15	received 22:18	resale 4:6
proof 9:13	question 22:4 22:13 25:20	recently 5:10	resemble 7:24
propose 8:22 27:10	26:12	recite 18:25	reserve 13:11 29:17
proposed 2:9 8:18 14:3 20:7 25:25	quite 26:5	record 10:9 22:16 24:18,25 25:2,5 30:5	reserved 25:17
protect 9:22	quoted 15:15	recording 1:9 30:4	reset 27:19
protection 5:19 9:21	r	referred 11:1 15:13	responding 22:3
prove 20:9 21:10	r 2:1,1	refers 11:21	responses 15:10
providing 27:22	raise 7:15,15 7:16	reflect 4:2	results 28:15
provision 13:25	rate 2:22 3:10 3:10 5:6,21	reflects 15:3	retail 12:8
psc 5:23	7:12,14,15,16	regulated 3:13 3:14 9:14	retailer 12:9,14
psc's 28:14	7:16 13:21	regulation 28:12	reversed 29:4
	14:16,19,20,21	reinstated 29:6	richards 7:9
	15:2,12,13,18		right 10:25 11:19 14:15
	15:19,20,21,22		16:19,24 18:6
	15:23 16:15,16		18:8,12 19:11

[right - tell]

19:11,13,17 21:13,14 23:21 24:23 roadmap 19:5 rodie 30:2,15 rule 13:9 29:6,9 ruling 8:19 running 8:7	selling 14:25 sensitive 21:22 22:7,10 sentence 18:9 18:16 sequence 29:9 service 5:10 27:9,16,19 set 15:14 17:15 sets 5:6 share 6:8 shivering 16:13 short 29:5,5 show 7:23 13:9 16:15 26:4 sign 7:7,10,13 signature 30:14 significant 4:22 simple 2:10 10:3,6 simply 6:14 15:1 22:3 26:12,23 sixty 25:23 skills 30:6 soars 16:12 solution 27:11 soon 20:23 sophisticated 21:1 sort 12:6 speakers 1:18 specific 17:25 19:18	specifically 11:21 specify 9:7 speculation 17:16 spiked 16:16 spikes 16:11 26:10 stable 26:6 staff 5:10,23 6:20 27:8 stage 10:13 15:9 25:11 26:7,13 stand 10:22,22 start 2:14 14:15 statement 17:4 18:14 states 21:14 steps 5:24 stuck 5:17 stuff 7:19 subcategories 3:9 subject 8:21 submit 11:13 18:15 substantially 23:23 sudden 7:16 sufficiency 9:25 sufficient 10:3 13:4 29:8	summer 27:24 supplier 7:3 supply 2:12,23 3:1,22 4:9,24 5:1 6:19 7:21 7:24 8:5 11:20 11:22 12:3,7,8 12:11 13:22 16:20,21,23 17:5,9 18:4,5 18:10,19,21 20:19 supports 24:18 25:4 supposing 24:3 supreme 17:14 28:22 surprised 10:7 28:11 susanna 2:3,8
			t tacking 15:2 take 18:3 22:5 taken 5:24 7:23 12:14 30:9 talk 12:3 19:14 20:8 talking 11:19 19:13 24:7 talks 20:12,13 teaser 7:12,14 14:16 20:18,24 22:6 tell 5:13 11:6 24:24

[term - wholesaler]

term 3:3 11:18 21:16 terms 12:7 17:1 tethered 17:24 18:2,4 19:20 thank 2:4,5 9:24 13:12 25:15,16,16 28:20 29:12,13 29:14,15,16 thanks 2:5 theoretically 12:8 theory 12:3 thing 4:7 15:25 15:25 things 2:18 5:5 think 14:13 16:24 17:13 19:18,19 20:2 20:3 21:12 22:10 23:1,22 23:25 24:1,4 25:12 thirsty 2:4 thought 10:11 11:9 19:6 22:14 24:13 three 10:16 throwing 29:4 tie 4:23 tied 3:22,24 4:2 6:7 7:20 18:17 time 7:2 8:7 14:22 19:1,10	today 2:5 told 10:17 toll 21:18 total 11:2 tough 14:22 track 16:3 traders 4:4 train 29:10 transcriber 30:1 transcript 30:3 30:5 tremendous 15:2 trial 16:14 24:20 trick 7:11 true 6:12 7:23 30:5 truth 12:15 try 16:9 trying 4:23 9:21 tune 9:19 two 8:17 10:16 13:11 14:18 22:20 25:17 26:20 29:3 twombly 16:25 17:14,14 19:8 19:20 20:3,16 26:14 29:1,3,8	u uh 16:18 ultimate 4:7 under 19:6,19 21:16 25:12 28:3 29:8 underlying 4:12 7:21 understand 12:2 17:2 23:16 28:25 29:7 understanding 14:22 unjust 8:15 unrelated 15:14 upheld 28:14 upward 21:2 use 6:3 12:6 19:9 20:17 utility 7:18 8:3 21:2 27:23 28:1 v v 1:4 value 15:3 variable 2:22 13:21 27:22 28:7 variation 21:2 21:3 varies 23:1 various 9:5	vary 12:4 16:15 16:21,23 23:3 23:23 24:5,6 versus 2:3 viable 8:8 view 23:14 viridian 22:9 27:5,18 vortex 16:12 w want 7:3 10:15 17:10 22:20 28:24 water 2:4 way 6:8 20:24 22:24,25 28:6 we've 13:8 26:14,14 weeks 29:3 went 16:17 wholesale 3:5 3:10 4:5,6 6:13 6:15 7:23 8:1 9:9,14 11:1,23 11:25 12:5,13 12:15,15,20 15:2,16 16:16 16:22 17:6,21 18:11 19:10,14 19:14,16 22:23 23:1,23 24:5 26:5,9,15,17,18 26:21,22,25 wholesaler 6:14
---	--	---	--

[wild - york's]

wild 21:2
win 15:8 16:19
withdraw
22:15
wondering
24:9
word 17:21
18:4 19:9
words 18:18
19:20
writeup 15:2
writing 21:17
wrong 5:22
19:24 21:9

x

xoom 1:4 2:3
3:11 6:6,13,25
9:6,8,10,13
13:13 14:5
xoom's 2:23 9:6
10:14 17:9

y

yeah 14:13
17:2 19:25
20:2,13 23:18
26:1
year 28:13
york 5:12 9:19
9:22 28:13
york's 9:14